Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Follow-up report on decisions relating to communications submitted under article 22 of the Convention*

Introduction

1. The present report is a compilation of information received from States parties and complainants that has been processed since the sixty-second session of the Committee against Torture (6 November–6 December 2017), and is presented in the framework of the Committee's follow-up procedure on decisions relating to communications submitted under article 22 of the Convention.[1]

A. Communication No. 381/2009

Faragollah et al. v. Switzerland

Decision adopted on:	21 November 2011
Violation:	Article 3
Remedy:	The Committee concluded that the removal of the complainant and his family to the Islamic Republic of Iran would constitute a violation of article 3 of the Convention and urged the State party to inform it, within 90 days of the date of transmittal of the decision, of the steps taken in response to the Committee's decision.

2. On 13 March 2018, the State party submitted that the complainants had been granted temporary admission to Switzerland by the Federal Office for Migration since 31 January 2012, in accordance with section 11 of the Federal Act on Foreigners.

3. On 5 April 2018, the complainant's counsel submitted that the complainant and his family members held valid refugee travel documents and temporary protection perm ts, which demonstrated that Switzerland was protecting them. He added that there had been no indication that Switzerland would withdraw their permits.

4. The Committee decided to close the follow-up dialogue with a note of satisfactory resolution.

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018), on 15 May 2018.

[1] The preceding follow-up report on decisions relating to communications submitted under article 22 of the Convention (CAT/C/62/3) was adopted by the Committee at its sixty-second session, on 27 November 2017, as amended.

B. Communication No. 477/2011[2]

Aarrass v. Morocco	
Decision adopted on:	19 May 2014
Violation:	Articles 2 (1), 11–13 and 15
Remedy:	The Committee urged the State party to inform it, within 90 days of the date of transmittal of the decision, of the measures that it had taken in accordance with the observations, including the initiation of an impartial and in-depth investigation into the complainant's allegations of torture. Such an investigation must include the conduct of medical examinations in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

5. In light of the absence of recent updates by the State party on the implementation of the above decision, the Committee requested a meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva, scheduled for 17 May 2018, to discuss possible measures to be taken by the State party's authorities to implement the Committee's decision in the present case.

6. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the Government's response.

C. Communication No. 500/2012[3]

Ramírez Martínez et al. v. Mexico	
Decision adopted on:	4 August 2015
Violation:	Articles 1, 2 (1), 12–15 and 22
Remedy:	The Committee urged the State party to: (a) launch a thorough and effective investigation into the acts of torture; (b) prosecute, sentence and punish appropriately the persons found guilty of the violations; (c) order the immediate release of the complainants; and (d) award fair and adequate compensation to the complainants and their families and provide rehabilitation. The Committee also reiterated the need to repeal the provision concerning preventive custody in domestic legislation, and to ensure that military forces were not responsible for law and order.

7. On 14 May 2018, the Chair of the Committee met with the Permanent Representative of Mexico to the United Nations Office and other international organizations in Geneva to discuss measures taken by the State party's authorities to implement the Committee's decision in the present case. The Chair enquired about the outcomes, if any, of the investigation into the acts of torture; about punishment of the perpetrators; about protection of the complainants from reprisals, reported to the Committee in September 2016; and whether all four complainants had been released and whether they had received the remedies requested by the Committee.

[2] See CAT/C/62/3, paras. 2–3.

[3] Ibid., paras. 6–8.

8. The State party's representative committed to seeking updated information from the national authorities and submitting the response to the Committee on the measures taken to implement the decision in the present case by 14 July 2018.

9. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the Government's response.

D. Communication No. 558/2013

R.D. et. al. v. Switzerland

Decision adopted on:	13 May 2016
Violation:	Article 3
Remedy:	The Committee concluded that the removal of the complainants to Belarus, the Russian Federation or any other country from which they would risk being removed or returned to the Russian Federation would constitute a violation of article 3 of the Convention, and urged the State party to inform it, within 90 days of the date of transmittal of the decision, of the steps taken in response to the Committee's decision.

10. On 13 March 2018, the State party submitted that the State Secretariat for Migration had granted the complainants temporary admission to Switzerland, in accordance with section 11 of the Federal Act on Foreigners. Therefore, the complainants cannot be forcibly removed from Switzerland.

11. On 20 March 2018, the State party's submission was transmitted for comments to the complainants' counsel (by 20 April 2018). On 1 May 2018, the counsel indicated that the complainants had benefited from temporary admission to Switzerland since June 2016 and were living in Geneva.

12. The Committee decided to close the follow-up dialogue with a note of satisfactory resolution.

F. Communication No. 606/2014[4]

Asfari v. Morocco

Decision adopted on:	15 November 2016
Violation:	Articles 1 and 12–16
Remedy:	The Committee was of the view that the State party had an obligation to: (a) provide the complainant with a remedy, including fair and adequate compensation and the means for as full rehabilitation as possible; (b) initiate an impartial and thorough investigation of the alleged events, in full conformity with the requirements of the Istanbul Protocol, in order to establish accountability and bring those responsible for the complainant's treatment to justice; and (c) refrain from any pressure, intimidation or reprisals against the physical or moral integrity of the complainant or his family, which would otherwise violate the State party's obligations under the Convention to cooperate with the Committee in good faith, to facilitate the implementation of the provisions of the Convention and to allow family visits to the complainant in prison.

[4] See CAT/C/62/3, paras. 21–27.

13. In light of the absence of recent updates by the State party on the implementation of the above decision, the Committee requested a meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva, scheduled for 17 May 2018, to discuss possible measures to be taken by the State party's authorities to implement the Committee's decision in the present case.

14. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the Government's response.

G. Communication No. 681/2015

M.K.M. v. Australia	
Decision adopted on:	10 May 2017
Violation:	Article 3
Remedy:	The Committee was of the view that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Afghanistan or to any other country where he ran a real risk of being expelled or returned to Afghanistan.

15. On 19 January 2018, the complainant's counsel informed the Committee that the State party's Department of Immigration and Border Protection, on 18 January 2018, told the complainant that he must immediately depart Australia or he would be detained and forcibly deported to Kabul.

16. On 19 January 2018, the complainant's comments were transmitted to the State party for immediate observations, by 22 January 2018.

17. On 23 January 2018, the State party recalled its comprehensive response to the Committee's decision, which it had provided on 28 August 2017.[5] The Government of Australia reiterated that it had given careful consideration in good faith to the Committee's recommendations; however, the complainant remained subject to the domestic migration processes of Australia and would have to be deported if he did not leave voluntarily, inter alia on the grounds that he had an alternative of internal relocation within Afghanistan, in the view of the State party.

18. On 16 February 2018, the counsel submitted the Australian Border Force's response of the same date, indicating that where an asylum seeker is found not to engage the

[5] On 28 August 2017, the State party expressed its disagreement with the Committee's finding that the return of the complainant to Afghanistan would constitute a violation of article 3 of the Convention, not accepting the Committee's view that Australia is obliged to refrain from returning the author to Afghanistan or to any other country where the author runs a real risk of being returned to Afghanistan. It asserted that the complainant had been subject to the domestic migration processes of Australia and could be removed to Afghanistan. The State party expressed the following concerns relating to the Committee's consideration of the communication: The Committee has not consistently applied the test, as provided for in article 3 of the Convention, to its consideration of the complainant's communication. The decision demonstrates a limited application of the legal principles articulated by the Committee to the author's particular circumstances and a limited and selected consideration of country information. The Committee has, erroneously in the view of Australia, stated that the domestic decision makers in Australia failed to adequately assess, or contest, particular aspects of the author's claims. The Committee has extended the scope of the non-refoulement obligation in article 3 of the Convention to encompass mental health treatment. The Committee has found, without sufficient evidence, that article 1 of the Convention applies in this particular case, including in respect of the alleged conduct of non-State actors. Finally, the Committee has espoused a position on the well-established international law principle of internal relocation which fundamentally differs from that of other human rights treaty bodies and of Australia.

protection obligations of Australia and has exhausted all administrative avenues for appeal, that person has no lawful basis for remaining in Australia and is expected to depart. Those who do not depart voluntarily are subject to removal from Australia. Voluntary return is an integral part of the Department's broader compliance strategy. Should the complainant wish to return to Afghanistan voluntarily, he should engage with a departmental compliance status resolution officer.

19. On 9 May 2018, the complainant's counsel submitted that the Afghan authorities were not able to protect the complainant from further persecution by the Taliban, recalling that the complainant's mental health condition was a result of the torture that he had endured from the Taliban in 2008. His mental health condition had not been considered, since the domestic decision makers had only considered whether the complainant would be denied medical care or treatment and whether his condition may expose him to harm. The counsel objected to the conclusion of the domestic decision makers that the complainant would not be denied medical care or treatment, when no such medical treatment existed in Afghanistan in the first place.

20. The counsel further argued that by failing to consider whether adequate treatment was available for the complainant's condition, the domestic decision makers failed to consider the risk of significant harm facing the complainant upon and after his return to Afghanistan. On 15 May 2018, the counsel's comments were transmitted to the State party with a request for observations (in one month), reminding the State party of its obligation not to deport the complainant.

21. The Committee decided to keep the follow-up dialogue open and to request a meeting with a representative of the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva during the Committee's sixty-fourth session (23 July–10 August 2018) to discuss possible measures to be taken by the State party's authorities to implement the Committee's decision in the present case.

H. Communication No. 682/2015[6]

Alhaj Ali v. Morocco

Decision adopted on:	3 August 2016
Violation:	Article 3
Remedy:	The Committee concluded that the complainant had sufficiently demonstrated that he faced a foreseeable, real and personal risk of torture if extradited to Saudi Arabia, in violation of article 3 of the Convention. Since the complainant had been in pretrial detention for almost two years, the Committee urged the State party to release him or to try him if charges were brought against him in Morocco.

22. On 29 March 2018, the Committee requested the State party to provide further information within one month (by 30 April 2018) on the measures taken to implement the Committee's decision in the present case. However, no response was received.

23. On 11 April 2018, the complainant's counsel reiterated his observations of 30 June 2017, indicating that the complainant's situation had not changed. Mr. Alhaj Ali had been detained in extradition detention since 30 October 2014, despite the Committee's decision of 22 August 2015 requesting the State party to proceed with his release or to try him if charges were brought against him in Morocco.

24. The counsel recalls that, on 1 March 2017, the complainant received a visit from a number of officials while he was on hunger strike to protest against his period of continued detention of nearly three years. He was told on that occasion that he would never be

[6] See CAT/C/62/3, paras. 44–53.

released, that he would spend his life in prison in Morocco and that it would be better for him to agree to be extradited to Saudi Arabia. It was then suggested that he should sign a statement consenting to his eventual extradition, which was presented as the only alternative to indefinite detention. That ultimatum has been a source of great psychological distress to the complainant.

25. In those circumstances, and given the pressure exerted on him, the complainant informed the counsel of his intention to waive his right to benefit from the conclusions adopted by the Committee in the decision in his case. The acceptance of his extradition to Saudi Arabia appears to him as the only possible solution to his current situation.

26. The counsel submitted that the unlimited nature of the complainant's detention illustrated the State party's refusal to respect article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in good faith, constituting a form of psychological torture and, in any case, cruel, inhuman and degrading treatment of the complainant.

27. In those circumstances, the counsel requested the Committee to call on the State party to implement the Committee's decision without delay, and to put an end to the arbitrary detention of Mr. Alhaj Ali and to his severe suffering.

28. On 14 May 2018, the counsel's further comments were transmitted for observations by the State party within 30 days (by 14 June 2018).

29. The Committee decided to keep the follow-up dialogue ongoing, and to consider taking further measures in light of the meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva, scheduled for 17 May 2018.

I. Communication No. 747/2016[7]

H.Y. v. Switzerland	
Decision adopted on:	9 August 2017
Violation:	Article 3
Remedy:	The Committee concluded that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from extraditing the complainant to Turkey or to any other country where he ran a real risk of being returned to Turkey.

30. On 15 December 2017, the complainant's counsel submitted that the extradition of the complainant had indeed been stopped, as the decision to extradite him to Turkey was cancelled by the Swiss authorities immediately after the Committee's decision. The complainant was set free.

31. However, the State party has considered executing the Turkish judgment and did invite Turkey to consent to it. No response has been received so far. At the same time, the State party was not willing to compensate the complainant for his detention, considered unlawful by the counsel. The State party also indicated that if it was allowed to execute the sentence, the time of the complainant's detention would be counted towards his sentence.

32. The counsel added that even the bail of SwF 100,000 that the complainant had to pay for being released after his first arrest is not being paid back to him. The State party claimed that his detention costs, including the medical treatment necessary because of his severe psychological problems during detention, caused by his constant fear of being extradited at any time, would even surpass the sum of his bail. The counsel objected that

[7] See CAT/C/62/3, paras. 54–56.

those costs would be considered as "costs of his extradition", which would be in violation of international law.

33. In the light of those circumstances, the counsel requested the Committee:

(a) To urgently ask Switzerland not to execute the Turkish sentence based on a statement made under torture and on another statement by a witness who has already revoked it in front of the Prosecutor of State in Turkey (evidence in the case);

(b) To recommend to the State party to compensate the complainant for the detention and its psychological effects on his health;

(c) To recommend to the State party to at least pay back the bail, and not to take into account the costs for the medical treatment of a victim of torture, which were necessary due to his detention pending extradition.

34. On 10 April 2018, the State party submitted its observations, noting that the complainant's counsel had criticized Switzerland for having made the requesting State aware of the possibility of executing the judgment from Turkey in Switzerland. At present, however, the requesting State has not filed such a request. In this context, the State party recalls the universal principle of *aut dedere aut prosequi*, according to which the requested State, if it refuses to extradite a person, must consider whether it can institute criminal proceedings or execute a punishment, in order to avoid a situation of impunity.

35. In any event, the request to execute the sentence imposed in Turkey would be the subject of an adversarial procedure before the competent judicial authorities, with the possibility of appeal (see art. 105 of the Federal Act on International Mutual Assistance in Criminal Matters). With regard to the compensation claimed as a result of the detention suffered, the Government of Switzerland stated that this claim was the subject of a decision issued by the Federal Office of Justice on 21 February 2018 and is currently pending before the Federal Criminal Court as a result of an appeal lodged by the author on 23 March 2018.

36. In addition, the State party argues that the proceedings before the Committee dealt with the question of whether the extradition of the complainant to Turkey was compatible with article 3 of the Convention. The Committee's decision thus concerned neither the author's detention with a view to extradition, nor any alternatives to extradition.

37. Since the complainant's claims are unfounded, it is appropriate to reject them as going beyond the scope of the implementation of the Committee's findings in this case. In view of the above, the State party invites the Committee to decide to no longer consider communication No. 747/2016 under its follow-up procedure.

38. The Committee decided to close the follow-up procedure with a note of satisfactory resolution as the complainant does not risk being extradited to Turkey.